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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT TACOMA

10 LIFELAST, INC., a Washington  
11 Corporation,,

12                   Plaintiff,

13                   v.

14 COLDWATER GROUP, INC., A Georgia  
15 Corporation; COLDWATER RESINS, INC.,  
16 a Georgia Corporation; COLDWATER  
17 COVERS INC., a Georgia Corporation;  
WILLIAM DAVID WITHERS, an individual;  
and CHARLES H. RHOADS, an individual,

18                   Defendants.

Case No. C04-5531RJB

ORDER EXTENDING  
DATE FOR SERVICE  
AND DENYING  
WITHOUT PREJUDICE  
COUNTERCLAIM  
DEFENDANT CODY  
MERRION'S MOTION TO  
DISMISS  
COUNTERCLAIMS FOR  
FAILURE TO PERFECT  
SERVICE

19 This matter comes before the court on Counterclaim Defendant Cody Merrion's Motion to Dismiss  
20 Counterclaims for Failure to Perfect Service. Dkt. 48. The court has considered the relevant documents  
and the remainder of the file herein.

21 This case was removed to federal court on August 24, 2005. Dkt. 1. On January 25, 2005,  
22 defendants, collectively referred to as the Coldwater defendants, filed an answer to the complaint, and  
23 counterclaims against plaintiff Lifelast, Inc. and against Cody Merrion. Dkt. 35. On May 25, 2005, the  
24 court granted Coldwater's uncontested motion for an extension of time for 30 days to serve Mr. Merrion.  
25 Dkt. 45.

26 On July 13, 2005, Mr. Merrion filed a motion pro se, requesting that the court dismiss the  
27 counterclaims against him for failure of Coldwater to perfect service upon him. Dkt. 48. Plaintiff did not  
28 properly note the motion, but it was noted by the Clerk for consideration on the court's August 5, 2005

1 calendar, in accord with Local Rule CR 7.

2 On August 5, 2005, Coldwater filed a response opposing Mr. Merrion's motion to dismiss, arguing  
 3 that, with the help of his attorney, Mr. Merrion has attempted to actively evade Coldwater's attempts to  
 4 serve him. Dkt. 49. The Coldwater defendants request that the court allow them until September 1, 2005  
 5 to serve Mr. Merrion. *Id.*

6 Fed.R.Civ.P. 4 provides in relevant part as follows:

7 **(m) Time Limit for Service.** If service of the summons and complaint is not made upon a  
 8 defendant within 120 days after the filing of the complaint, the court, upon motion or on its own  
 9 initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant  
 10 or direct that service be effected within a specified time; provided that if the plaintiff shows good  
 cause for the failure, the court shall extend the time for service for an appropriate period. This  
 subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

11 *Emphasis in the original.*

12 Mr. Merrion did not properly note the motion. Coldwater filed a response on the date the motion  
 13 was noted for consideration, rather than on the Monday before the noting date. This did not allow time for  
 14 a reply by Mr. Merrion. See Local Rule CR 7(d)(3). Nonetheless, it is uncontested that Mr. Merrion has  
 15 not been served with a copy of Coldwater's counterclaims. Coldwater requests that the court extend the  
 16 deadline for service on Mr. Merrion until September 1, 2005. In the interest of fairness and efficiency, the  
 17 court should grant that request. Mr. Merrion's motion to dismiss should be denied without prejudice.

18 Therefore, it is hereby

19 **ORDERED** that Counterclaim Defendant Cody Merrion's Motion to Dismiss Counterclaims for  
 20 Failure to Perfect Service (Dkt. 48) is **DENIED WITHOUT PREJUDICE**. The time for perfecting  
 21 service on Mr. Merrion by the Coldwater defendants is **EXTENDED** until September 1, 2005.

22 The Clerk is directed to send uncertified copies of this Order to Mr. Cody Merrion at P.O. Box  
 23 440429, Kennesaw, GA, 30160; to all counsel of record, and to any party appearing *pro se* at said party's  
 24 last known address.

25 DATED this 5<sup>th</sup> day of August, 2005.

26  
 27   
 28 Robert J. Bryan  
 United States District Judge